

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8
9 RALPH COUNTRYMAN,)
10 Plaintiff,)
11 vs.)
12 JAKE VIALPANDO, *et al.*,)
13 Defendants.)
14 _____)

3:22-cv-00008-RCJ-CSD

ORDER

15 Plaintiff filed this case raising constitutional claims under 42 U.S.C. § 1983 and is
16 proceeding pro se. He has attempted service of Defendants through certified mail. Defendants
17 move for dismissal under Fed. R. Civ. P. 12(b)(5) for failure to properly effectuate service. (ECF
18 No. 8.) In response, Plaintiff filed a one-page filing titled, “Request for Waiver of Service and
19 Motion to Stay Summary Judgment.” (ECF No. 11.) In it, he claims that Defendants’ admission
20 of service via certified mail is sufficient and claims Defendants’ motion is a premature motion for
21 summary judgment. Plaintiff is incorrect on both accounts.

22 ///

23 ///

24 ///

1 Fed. R. Civ. P. 4(e) states:

2 SERVING AN INDIVIDUAL WITHIN A JUDICIAL DISTRICT OF THE UNITED
3 STATES. Unless federal law provides otherwise, an individual—other than a minor,
4 an incompetent person, or a person whose waiver has been filed—may be served
5 in a judicial district of the United States by:

- 6 (1) following state law for serving a summons in an action brought in courts of
7 general jurisdiction in the state where the district court is located or where
8 service is made; or
9 (2) doing any of the following:
10 (A) delivering a copy of the summons and of the complaint to the individual
11 personally;
12 (B) leaving a copy of each at the individual's dwelling or usual place of
13 abode with someone of suitable age and discretion who resides there; or
14 (C) delivering a copy of each to an agent authorized by appointment or by
15 law to receive service of process.

16 Nevada fails to provide for additional bases of service. Nev. R. Civ. P. 4.2(a) states:

17 Serving an Individual. Unless otherwise provided by these rules, service may be
18 made on an individual:

- 19 (1) by delivering a copy of the summons and complaint to the individual
20 personally;
21 (2) by leaving a copy of the summons and complaint at the individual's dwelling
22 or usual place of abode with a person of suitable age and discretion who
23 currently resides therein and is not an adverse party to the individual being
24 served; or
25 (3) by delivering a copy of the summons and complaint to an agent authorized
by appointment or by law to receive service of process.

26 Neither of these rules permit the service of an individual defendant through certified mail.

27 See, e.g., *Whitfield v. Baldwin*, No. 3:21-CV-00443-MMD-VCF, 2022 WL 718435, at *1 (D. Nev.
28 Mar. 10, 2022). Thus, Plaintiff has not properly served Defendants. Fed. R. Civ. P. 12(b)(5)
29 permits a defendant to file a motion to dismiss for improper service, so Defendants' motion is not
30 a premature motion for summary judgment but is rather a timely motion to dismiss. Given
31 Plaintiff's pro se status, the Court will allow Plaintiff additional time to perfect service. Plaintiff
32 shall serve Defendants in accordance with Fed. R. Civ. P. 4 within 45 days of this order. Failure
33 to properly serve Defendants may result in dismissal of this case.

CONCLUSION

IT IS HEREBY ORDERED that Motion to Dismiss (ECF No. 8) is DENIED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that Motion for Waiver of Service (ECF No. 11) is DENIED.

IT IS FURTHER ORDERED that Motion to Stay Summary Judgment (ECF No. 12) is DENIED.

IT IS SO ORDERED.

Dated July 26, 2022.

ROBERT C. JONES
United States District Judge